



## POLICE DEPARTMENT

July 8, 2010

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Jeffrey Brienza  
Tax Registry 915056  
94 Precinct  
Disciplinary Case No. 84851/09

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The above-named member of the Department appeared before me on June 9, 2010, charged with the following:

1. Said Lieutenant Jeffrey Brienza, assigned to the 94<sup>th</sup> Precinct, on or about January 15, 2008, did wrongfully cause false entries to be made in Department records to wit: said Lieutenant retrieved an old Firearms Range attendance slip, altered the date and submitted the altered attendance slip to Department Personnel.

P.G. 203-05, Page 1 Paragraph 4 PERFORMANCE ON DUTY

2. Said Lieutenant Jeffrey Brienza, assigned to the 94<sup>th</sup> Precinct, on or about January 15, 2008, having been scheduled to attend the Firearms Range, for Firearms training, failed to appear for said training.

P.G. 203-05, Page 1 Paragraphs 1 & 2 – PERFORMANCE ON DUTY

P.G. 205-18, Page 1 & 2 ABSENT WITHOUT LEAVE, PERSONNEL  
MATTERS

The Department was represented by Javier Seymore, Esq., Department Advocate's Office, and the Respondent was represented by James Moschella, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

COURTESY • PROFESSIONALISM • RESPECT

DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent became a police officer in June 1995, and after graduating from the Police Academy, he was assigned to the 81 Precinct, and then to the UF-250 Unit. In February 2001, he was promoted to Sergeant and assigned to the 90 Precinct. After about three years and a short stint with the School Safety task Force, the Respondent was promoted to Lieutenant and assigned to his current command, the 94 Precinct.

Upon arriving at the 94 Precinct, the Respondent was assigned to the first platoon, which was the midnight to 8 a.m. shift. He said he took this shift so that he could help his wife at home. When he first arrived at the 94 Precinct, he had one child. In January of 2008, he had three children, who were, at the time, a [REDACTED]-old, a [REDACTED]-old and an [REDACTED]-old.

The Respondent said that his Commanding Officer at the time was Deputy Inspector Paul Vorbeck, and that he "was not held in high standing" by Vorbeck. He said, "If I needed any time off I'd have to get it directly from him. My only I guess authority was to punch and give out disciplinary actions to subordinates." When asked if there had been times prior to January 14, 2008 when he had requested days off or requested "E-days,"<sup>1</sup> he stated, "I do not have any recollection as of being granted any days by Inspector Vorbeck other than anything that was for certain obligations...I really tried to not ask for E-days, because they wouldn't be granted, so a few times that I had I wasn't successful."

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<sup>1</sup> Emergency excusals

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Additionally, [REDACTED] the Respondent and his family had to move because a neighbor "staged some kind of campaign of intimidation" against them. He said that the neighbor "stalked" his wife and "constantly called the police department to make allegations" against him. He said that he saw no recourse, so he sold his house and moved his family. When asked to describe his wife's emotional state at the time around [REDACTED]'s birth, the Respondent said,

At the time he was born, I guess she had a good amount of depression. We had just sustained a whole ordeal of the issue that I had with the neighbor and having to move. My job situation was not great, I was not getting overtime, I basically wasn't in good standing with my commanding officer, that was very stressful. And the toll of the kid was a lot at the time. Basically we really didn't have anyone to turn to. We didn't have help...There was a lot of tension during the later part of 2007, we had a brief split in our relationship...A separation. And we had reconciled toward the end of that year.

[REDACTED]

[REDACTED]

[REDACTED]

Regarding, January 15, 2008, the Respondent agreed that going to the range would have caused him to have to change his tour because the range is not conducted on the midnight shift. He stated, "My tour of duties precludes any range appearance. So

being that I had – that I had already filed for duty, that I didn't think I had to appear at the 94 Precinct. So because of all the tension at home, I ended up staying at home, I ended up staying at home with my wife that day, and I had missed appearing at work or appearing at the range.” He made no attempt to ask his boss for an emergency excusal.

He said that the practice at the 94 Precinct was for a member who had attended the range to submit their “range slip” to show their attendance at the range. He said that after his range slip was requested two or three times, he submitted a photocopy of a slip from a previous range attendance which he altered.

In April 2008, the Respondent's captain informed him that there was a discrepancy concerning his range attendance because the Firearms and Tactics Section said that he did not attend the range, while the precinct roll call indicated that he had. He told his commanding officer that he “would take care of the problem.” He then went to the range on his own time the following day, or the day after that.

Prior to arriving at the 94 Precinct, the Respondent said that he had been rated 3.5 [out of 5] on his evaluation. Thereafter, his former commanding officer, Vorbeck, rated him 3.0. His current commanding officer initially also rated him 3.0, although his last evaluation, for 2009, reflected a 3.5 rating. He has never been the subject of charges and specifications.

On cross-examination, the Respondent said he got notified to go to the range a week prior to his range date. He said the first range cycle for each year began in January and he thought it ended in “maybe May or June,” but in 2008, the range cycle concluded in mid-April. He noted that he was assigned to attend the range “in the bitter cold of January.”

The Respondent said he kept a copy of his 2007 range slip [Department Exhibit (DX) 1] in a folder in the precinct. DX 1 indicates that in 2007, he attended the range on January 16, 2007. When asked to explain how he altered the 2007 range slip he said,

I don't recall exactly. But I did seem to take out the old date and type in the new one...I might white it out, or usually cut it out and probably make a photocopy...I don't recall [what I did] I probably would have done the latter...Remove the date by, I guess, cutting it and maybe photocopying of that and subsequently type on the photocopy.

The Respondent said that after he altered the document, he submitted it to roll call "that day."

On January 15, 2008, the day that the Respondent was supposed to be at the range, he did not call the precinct or tell anyone that he did not go to the range. He explained that if he was given a notification to go to the range and something came up and he was not able to be there, he would have to obtain approval to not show up to work and submit a request for leave. He said that attendance at the range "is considered a paid day at work." He did not submit a "UF-28<sup>2</sup>" for January 15, 2008.

The Respondent explained that when a member is assigned to attend the range, he is assigned to the range for the whole tour. He said if one were supposed to go to the range and did not go, he would be "deducted time." He said he did not have any time deducted from him. When his captain approached him about the discrepancy regarding his range attendance, he did not say anything about altering his range slip, and went on his own to the range at a later date. He said, "As was the case, I had a responsibility to go twice a year to each cycle to the range, it was my responsibility to get that done. I had

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<sup>2</sup> Leave of Absence Report



already obtained my qualification. I had thought the whole time I would make that up, I intended to go on my own time to the range.”

On re-direct examination, the Respondent agreed that his tour was changed on January 15, 2008, so there was coverage on the midnight shift; and, when he went to the range, he went on his own time, even though lieutenants are entitled to pay. He apologized for the problems he caused the Department and the Court. He said he missed the range and “never intended this to happen.” He guessed that things “spiraled” and he did not want to be punished for missing the range, as he believed two lieutenants from his command were issued command disciplines for not attending the range even though they did go to work instead. He said he was aware of his responsibility to show up at the range and he is aware that he should have never done what he did. He said the stress in his “situation at the time” contributed to his admitted misconduct. He did not believe that he “had given up on the Department,” and thought that he is “an asset still.”

On re-cross examination, the Respondent was asked if he would have gone to the range to fulfill his range requirement for that cycle had his captain not brought the discrepancy to his attention. He replied that he did not realize that the range cycle was ending in April. He said, “So, I would have attended the range because that is my duty. And I do have a strong sense of responsibility...So I could have gone. It was under my own power. I definitely would have made sure I get my qualification.”

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on June 30, 1995. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has pleaded guilty to the specifications in this case. The sole issue is penalty. The Department has recommended a penalty involving the loss of 30 vacation days and dismissal probation. The Respondent has requested a lesser penalty.

The Respondent has admitted to failing to go to the range when assigned to do so on January 15, 2008 and altering an old range attendance slip to make it appear that he did attend the range on that date.


The reasons the Respondent gave for engaging in that conduct are unavailing and unacceptable and the Respondent acknowledged this. The one truly mitigating factor is that the Respondent attended the range, on his own time to make up for the missed work and range time. Nonetheless, the falsification of a departmental document is a serious matter and constitutes an integrity issue. Further the Respondent, as a lieutenant, is in a leadership position in this Department and should set an example.

The penalty recommended by the Department Advocate is appropriate thus this Court recommends that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without

further proceedings. Further this Court recommends that the Respondent forfeit 30 vacation days.

Respectfully Submitted,

  
Martin G. Karopkin  
Deputy Commissioner Trials

 **APPROVED**  
NOV 15 2010  
RAYMOND W. KELLY  
POLICE COMMISSIONER




POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
LIEUTENANT JEFFREY BRIENZA  
TAX REGISTRY NO. 915056  
DISCIPLINARY CASE NO. 84851/09

In 2009, the Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 3.0 [REDACTED]  
[REDACTED]

For your consideration.

  
Martin G. Karopkin  
Deputy Commissioner Trials